

TITLE 38: FINANCIAL INSTITUTIONS
CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 215
PREDATORY LOAN PREVENTION ACT

Section

215.10 Definitions

215.20 Terms of Loans Extended to Consumers

AUTHORITY: Implementing and authorized by the Predatory Loan Prevention Act [815 ILCS 123].

SOURCE: Adopted at 46 Ill. Reg. _____, effective _____.

Section 215.10 Definitions

"Act" means the Predatory Loan Prevention Act [815 ILCS 123].

"Billing cycle" has the same meaning as "billing cycle" in Regulation Z.

"Bureau" means the federal agency called the Consumer Financial Protection Bureau or the Bureau of Consumer Financial Protection.

"Consumer" means any natural person, including consumers acting jointly.

"Closed-end credit" means consumer credit but for the conditions applicable to consumer credit under this Part other than consumer credit that is "open-end credit" as that term is defined in Regulation Z.

"Finance charge" has the same meaning as "finance charge" in Regulation Z.

"Lender" means any person or entity, including any affiliate or subsidiary of a lender, that offers or makes a loan, buys a whole or partial interest in a loan, arranges a loan for a third party, or acts as an agent for a third party in making a loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised loan or a subterfuge for the purpose of avoiding the Act.

"Loan" means money or credit provided to a consumer in exchange for the consumer's agreement to a certain set of terms, including, but not limited to, any

finance charges, interest, or other conditions. This includes closed-end and open-end credit, retail installment sales contracts, motor vehicle retail installment sales contracts, and any transaction conducted via any medium whatsoever, including, but not limited to, paper, facsimile, Internet, or telephone. It does not include a commercial loan.

"Predatory Loan Prevention Act APR (PLPA APR)" is the cost of the consumer credit expressed as an annual rate, and shall be calculated in accordance with 32 CFR. 232.4(c), as in effect on the effective date of the Act and as incorporated in 38 Ill. Adm. Code 215.

"Open-end credit" means consumer credit that (but for the conditions applicable to consumer credit under this part) is "open-end credit" under Regulation Z.

"Person" means any natural person.

"Regulation Z" means any rules, or interpretations thereof, issued by the Bureau to implement the Truth in Lending Act, as amended from time to time, including any interpretation or approval issued by an official or employee duly authorized by the Bureau to issue such interpretations or approvals. However, for any provision of this Part requiring a creditor to comply with Regulation Z, a creditor who is subject to Regulation Z (12 CFR 226) issued by the Board of Governors of the Federal Reserve System must continue to comply with 12 CFR 226.

Words that are not defined in this part have the same meanings given to them in Regulation Z (12 CFR 1026) issued by the Bureau, as amendment from time to time, including any interpretation thereof by the Bureau or an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations.

Words that are not defined in this part or Regulation Z, or any interpretation thereof, have the meanings given to them by State or federal law.

Section 215.20 Terms of Loans Extended to Consumers

a) General conditions. A lender who extends a loan to a consumer may not require the consumer to pay a PLPA APR for the loan with respect to such extension of a loan, except as:

- 1) Agreed to under the terms of the loan agreement or promissory note;
- 2) Authorized by applicable State or federal law; and
- 3) Not specifically prohibited by this part.

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- b) Limit on cost of a loan. A lender may not impose a PLPA APR greater than 36 percent in connection with an extension of a loan that is closed-end credit or in any billing cycle for open-end credit.
- c) Calculation of the PLPA APR
- 1) Charges included in the PLPA APR. The charges for the PLPA APR shall include, as applicable to the extension of the loan:
 - A) Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;
 - B) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and
 - C) Except for a bona fide fee (other than a periodic rate) which may be excluded under paragraph (d) of this section:
 - i) Finance charges associated with the loan;
 - ii) Any application fee charged to a consumer who applies for a loan; and
 - iii) Any fee imposed for participation in any plan or arrangement for a loan, subject to paragraph (c)(2)(B)(ii) of this section.
 - D) Certain exclusions of Regulation Z inapplicable. Any charge set forth in paragraphs (c)(1)(A) through (C) of this section shall be included in the calculation of the PLPA APR even if that charge would be excluded from the finance charge under Regulation Z.
 - 2) Computing the PLPA APR
 - A) Closed-end credit. For closed-end credit, the PLPA APR shall be calculated following the rules for calculating and disclosing the "Annual Percentage Rate (APR)" for credit transactions under Regulation Z based on the charges set forth in paragraph (c)(1) of this Section.

B) Open-end credit

- i) In general. Except as provided in paragraph (c)(2)(B)(ii) of this Section, for open-end credit, the PLPA APR shall be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in Section 1026.14(c) and (d) of Regulation Z (as if a lender must comply with that Section) based on the charges set forth in paragraph (c)(1) of this Section. Notwithstanding Section 1026.14(c) and (d) of Regulation Z, the amount of charges related to opening, renewing, or continuing an account must be included in the calculation of the PLPA APR to the extent those charges are set forth in paragraph (c)(1) of this Section.
- ii) No balance during a billing cycle. For open-end credit, if the PLPA APR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a lender may not impose any fee or charge during that billing cycle, except that the lender may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed \$100 per annum, regardless of the billing cycle in which the participation fee is imposed; provided, however, that the \$100-per annum limitation on the amount of the participation fee does not apply to a bona fide participation fee imposed in accordance with paragraph (d) of this Section.

d) Bona Fide Fee Charged to a Credit Card Account

- 1) In general. For a loan extended in a credit card account under an open-end (not home-secured) loan plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the PLPA APR pursuant to paragraph (c)(1) of this Section. The exclusion provided for any bona fide fee under this paragraph (d) applies only to the extent that the charge by the lender is a bona fide fee and must be reasonable for that type of fee.
- 2) Ineligible items. The exclusion for bona fide fees in paragraph (d)(1) of this Section does not apply to:
 - A) Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; or

- B) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit.

3) Standards Relating to Bona Fide Fees

- A) Like-kind fees. To assess whether a bona fide fee is reasonable under paragraph (d)(1) of this Section, the fee must be compared to fees typically imposed by other lenders for the same or a substantially similar product or service. For example, when assessing a bona fide cash advance fee, that fee must be compared to fees charged by other lenders for transactions in which consumers receive extensions of credit in the form of cash or its equivalent. Conversely, when assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (e.g. a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the customer.

- B) Safe harbor. A bona fide fee is reasonable under paragraph (d)(1) of this Section if the amount of the fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by 5 or more lenders each of whose U.S. credit cards in force is at least \$3 billion in an outstanding balance (or at least \$3 billion in loans on U.S. credit card accounts initially extended by the lender) at any time during the 3-year period preceding the time such average is computed.

- C) Reasonable fee. A bona fide fee that is higher than an average amount, as calculated under paragraph (d)(3)(B) of this Section, also may be reasonable under paragraph (d)(1) of this Section depending on other factors relating to the credit card account. A bona fide fee charged by a lender is not unreasonable solely because other lenders do not charge a fee for the same or a substantially similar product or service.

- D) Indicia of reasonableness for a participation fee. An amount of a bona fide fee for participation in a credit card account may be reasonable under paragraph (d)(1) of this Section if that amount reasonably corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the

credit card account, or to other factors relating to the credit card account. For example, even if other lenders typically charge \$100 per annum for participation in credit card accounts, a \$400 fee nevertheless may be reasonable if (relative to other accounts carrying participation fees) the credit made available to the consumer is significantly higher or additional services or other benefits are offered under that account.

4) Effect of Charging Fees on Bona Fide Fees

A) Bona fide fees treated separately from charges for credit insurance products or credit-related ancillary products. If a lender imposes a fee described in paragraph (c)(1) of this Section and imposes a finance charge to a consumer, the total amount of the fee(s) and finance charge(s) shall be included in the PLPA APR pursuant to paragraph (c) of this Section, and the imposition of any fee or finance charge described in paragraph (c)(1) of this Section shall not affect whether another type of fee may be excluded as a bona fide fee under this paragraph (d).

B) Effect of charges for non-bona fide fees. If a lender imposes any fee (other than a periodic rate or a fee that must be included in the PLPA APR pursuant to paragraph (c)(1) of this Section) that is not a bona fide fee and imposes a finance charge to a consumer, the total amount of those fees, including any bona fide fees, and other finance charges shall be included in the PLPA APR pursuant to paragraph (c) of this Section.